



BYRON W. BROWN  
MAYOR

CITY OF BUFFALO  
DEPARTMENT OF LAW



TIMOTHY A BALL  
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February 5, 2021

The Honorable Christina Reiss  
United States District Court, District of Vermont  
P.O. Box 446  
Burlington, VT 05402-0446

Re: *Black Love Resists in the Rust, et al. v. the City of Buffalo, et al.*  
18-cv-719

Dear Judge Reiss:

We are in receipt of Plaintiffs' January 22, 2021 correspondence relating to deposition dates and ESI, (*See*, DKT No. 78), as well as their subsequently narrowed letter regarding ESI only filed on January 25, 2021. (*See*, DKT. No. 79). Defendants also note the Status Conference scheduled for this Monday and will therefore keep our response brief.

With respect to ESI, Defendants believe and have advised Plaintiffs that using custodians as a production metric is not practical due to the variance between the number of "hits" (e.g., some custodians have hundreds of hits for a single search term whereas other custodians have less than a hundred in total). As an alternative we suggest identifying a certain number of emails/bates numbered pages to be produced or benchmarks other than weekly intervals to account for these variances in "hits".

With that said, Defendants have continued to produce ESI as quickly as possible and have made substantial progress towards completion of the initial 20 custodians. We will continue this production over the next two days, and will further advise of the status of remaining ESI at our conference. Defendants will of course produce any additional ESI requested by Plaintiffs in the manner and rate deemed appropriate by the Court.

We also offer for status that since our last December 14, 2020 Hearing/Conference, Defendants have continued to produce ESI as well as the other identified documents, affidavits, and information, in accordance with the Court's Orders. This has amounted to producing approximately 14,267 pages of documents over the past 53 days (*See*, Bates No.: COB024380-COB038647).

Five additional depositions have also been scheduled for February and March and additional documents relating to the Commission on Citizen Rights and Community relations will be produced next week to complete the production ordered at our December 14, 2020 Hearing.

We have also met and conferred with Plaintiffs' counsel regarding the Plaintiffs' Fourth and Fifth Requests for Production on several occasions and believe that substantial progress had been made in narrowing those requests/objections.

Given all of the above, we respectfully submit that any claims of delay made by Plaintiff are unfounded and Defendants look forward to discussing this further at our conference so that all parties can continue to move this matter forward.

Thank you again for your courtesies and attention.

Respectfully yours,

TIMOTHY A. BALL, ESQ.  
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*/s/ Robert E. Quinn*

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